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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	STATINTL [redacted], OLC 7D35 Hqs.		
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ACTION	DIRECT REPLY	PREPARE REPLY
APPROVAL	DISPATCH	RECOMMENDATION
COMMENT	FILE	RETURN
CONCURRENCE	INFORMATION	SIGNATURE

Remarks:

STATINTL

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FROM: NAME, ADDRESS AND PHONE NO.	DATE
[redacted], OGC	5/29/75

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CRC, 11/7/2003

ALC 75-1160

OGC 75-2021

28 May 1975

STAT

MEMORANDUM FOR: Office of Legislative Counsel

SUBJECT : S. 815 - "Open Government Act of 1975" and S. 774 - "Public Disclosure of Lobbying Act of 1975"

1. You requested OGC review of your comments on S. 815 and S. 774, bills designed to regulate lobbying before Congress and the Executive branch. Each would require non-governmental individuals who regularly attempt to influence the "policymaking process" of the Executive branch to register with the Federal Election Commission, record their contacts with Executive branch officials, and file quarterly reports on these contacts with the Commission. S. 815 defines "policymaking process" as:

... any action taken by a federal officer or employee ... with respect to any pending or proposed rule, adjudication, hearing, investigation, or other action in the Executive branch; ...

S. 774 defines "policymaking process" as:

... any action taken by a federal officer or employee ... with respect to any rule, adjudication, or other policy matter in the Executive branch;

Neither bill specifically exempts the CIA or activities which would reveal sensitive sources and methods or information affecting the security of the United States.

2. In general, we agree with OLC's concern that these bills could be interpreted to cover Agency activities and lead to compromise of intelligence sources and methods as well as revelation of CIA organization and employees. We suggest, however, that the statement in paragraph 3 to the effect that "if the bill were interpreted to apply strictly to influencing the administrative and regulatory functions within the executive branch, the Central Intelligence Agency would have no direct interest in such regulation," should be reconsidered. The CIA arguably engages in many sensitive administrative activities. Thus, the phrase "other action" in S. 815 need not be broadly interpreted to cover the example of an Agency choice between competitive bids on a sensitive project. Moreover, could not CIA security investigations be interpreted to


fall within the category "investigations" listed in S. 815's definition of policymaking process? On the basis of the foregoing, the CIA has direct interest in the legislation regardless of whether or not "other action" is narrowly interpreted to cover only administrative matters.

3. We concur with OLC's appraisal that section 7 of S. 774 would seriously impair the Agency's ability to function. Section 7 goes far beyond regulation of lobbyists and lobbying as such, and requires:

... [a]ll officers and members of the executive branch in grades GS 15 or above in the General Schedule, or in any of the executive levels under Title 5 of the United States Code, or who are designated by any persons to whom this subsection otherwise applies as being responsible for making or recommending decisions affecting the policymaking process in the executive branch, shall prepare a record of each oral or written communication received directly or by referral from outside parties expressing an opinion or containing information with respect to such process.

The record must include the name and profession of the official, the date the communication was received, identification from the person from whom it was received, a brief summary of its subject matter, and any action taken. The record must be placed in a case file or public file, and be available for public inspection.

4. Section 7 is similar in many respects to S. 1289, "The Open Communication Act of 1975," which was introduced to the Senate on 21 March 1975, a month later than S. 774. OGC commented on S. 1289 for OLC on 22 April 1975 (OGC 75-1629). Note that Section 7 of S. 774 could impose much more onerous burdens on the CIA since it applies not only to the DCI and the DDCI but also to employees who are designated by the DCI or DDCI as being responsible for making or recommending decisions affecting the policymaking process. Thus, Agency employees otherwise exempt from the General Schedule or employees designated at executive levels IV and V under the Agency's own authorities could be covered. Moreover, Section 7 of S. 774 is not limited to communications concerning regulatory activity as S. 1289 arguably is, nor does Section 7 differentiate between records maintained for full, summary or internal disclosure as does S. 1289.


Office of General Counsel

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